

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: SUSSEX LUMBER LAND CO., LLC**

**(Case No. 11585)**

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 32.1 feet from the sixty (60) feet front yard setback requirement for a proposed shelter. This application pertains to certain real property located at the northeast intersection of Mitchell Street and Dagsboro Road (911 Address: 655 Mitchell Street, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-5.00-80.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated July 8, 2013, a photograph of the proposed L-shed, and a drawing of the proposed L-shed.
2. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application and no correspondence in support of the Application.
3. Jeffrey Revell was sworn in to testify about the Application.
4. The Board found that Mr. Revell testified that the proposed shelter is needed to protect lumber stored outside on the Property.
5. The Board found that Mr. Revell testified that the lumber company has operated on this Property since 1972.
6. The Board found that Mr. Revell testified that the Delaware Department of Transportation ("DelDOT") has widened the adjacent road over the years and is planning to widen the road again. The widening of the road has created the need for the variance.
7. The Board found that Mr. Revell testified that the shelter is referred to as an "L-Shed". The shelter will help protect the lumber from weathering. The proposed shelter is a lumber rack with a roof and will be within the fenced in lumber yard.
8. The Board found that Mr. Revell testified that the shelter roof will be 11 feet wide and 19 feet tall. The structure will be free-standing with no sides.
9. The Board found that Mr. Revell testified that their parking lot is sometimes used as a shortcut for drivers along the adjacent road and that the proposed structure should help to curb that behavior.
10. The Board found that Mr. Revell testified that the Property has not changed its elevation.
11. The Board found that Mr. Revell testified that the Applicant has stored lumber on this location and is placing the structure simply to cover the lumber.
12. The Board found that Mr. Revell testified that there will be no change to the existing impervious surface.
13. The Board found that Mr. Revell testified that neighbors' concern about run-off comes from other properties but the Applicant is looking to improve its system to better handle run-off as well.
14. The Board found that Mr. Revell testified that the Property is unique in shape and location.

15. The Board found that Mr. Revell testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
16. The Board found that Mr. Revell testified that the difficulty was not created by the Applicant.
17. The Board found that Mr. Revell testified that the variance will not alter the character of the neighborhood. There is commercial property nearby and the shelter will improve the appearance of the Property.
18. The Board found that Mr. Revell testified that the variance requested is the minimum variance necessary to afford relief.
19. The Board found that Suparna Mehra and Suraj Gyani were sworn in and testified in opposition to the Application.
20. The Board found that Mr. Gyani testified that he owns property adjacent to the Applicant's lot. There are nine (9) manufactured homes on his property.
21. The Board found that Mr. Gyani testified that the Applicant has done a great job with its property.
22. The Board found that Mr. Gyani testified that there is a severe run off issue between the properties. His property is lower than the Applicant's property and water does not drain properly. His property receives run-off from Route 113 and Mitchell Street.
23. The Board found that Mr. Gyani testified that he wants an easement to a ditch on the Applicant's property and that he is concerned additional improvements to the Property will adversely affect his property.
24. The Board found that Ms. Mehra testified that she is concerned that the proposal will lead to additional water.
25. The Board found that Mr. Revell testified that the proposed shelter is angled to drain into the existing Stormwater Management drains and that there will be no additional drainage to the neighbor's property.
26. The Board found that Mr. Revell testified that the Property is paved at the location of the proposed shelter.
27. The Board found that one (1) party appeared in support of the Application.
28. The Board found that two (2) parties appeared in opposition to the Application.
29. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
  - a. The Property has a unique shape which is apparent when reviewing the survey attached the Application. The Property is located at an intersection and is shaped like an arrow. This unique angle has created an odd building envelope. The situation is also unique because DeIDOT has widened the road, thereby taking part of the Applicant's front yard. The uniqueness of the Property and the situation have created an exceptional practical difficulty for the Applicant who seeks to construct the L-shed on the Property.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the requested variance in order to construct the L-shed on the Property and no additional variances are requested. The L-shed provides the Applicant with cover for its lumber and the shelter will protect the lumber from weathering. The Applicant has similar shelter on the Property and has experienced good results from the structure. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct a reasonably sized L-shed on the Property. The Board is convinced that the

shape and location of the L-shed are also reasonable; which is confirmed when reviewing the survey.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant and its predecessor have used the Property as a lumber yard since 1972 and, over the years, DelDOT has widened the adjacent road thereby lessening the size of the front yard. The road widening and the Property's unique shape have created a unique building envelope; neither of which appear to have been created by the Applicant. As such, it is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Property has been used by a lumber yard since 1972 and the Applicant proposes to place the L-shed over an existing pile of lumber to provide protection from the elements. While neighbors have expressed concern about the impact of run-off from the L-shed, the Board is not persuaded that the L-shed will have an adverse effect on run-off or the character of the neighborhood. The area where the L-shed is proposed to be placed is currently paved so the area is already impervious. The addition of the L-shed will not increase the degree of imperviousness on the Property. The Applicant, through its witness, has also testified that it will seek to improve the handling of run-off on the Property. The Board was simply not convinced that the L-shed would impact run-off onto the neighbors' property any more than the current pavement and lumber pile. The Property is also located near commercial properties and had been used as a lumber yard for many years so the Board was not convinced that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow it to place an L-shed on the Property as shown on the survey to cover its existing lumber pile and that no additional variances are being requested.

The Board granted the variance application finding that it met the standards for granting a variance.

#### Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date July 21, 2015.